FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 356/2007
(*Vishwanath @ Keshaorao Bhimraoji Bhore* **VERSUS** *Narendra Sudhakar Joshi***)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Marathe, Advocate for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 13th July, 2007.

Heard Shri Marathe, the learned counsel for the appellant.

The appellant is the original defendant. A suit was filed by the plaintiff for eviction of the defendant from the suit block and for recovery of arrears of rent. The defendant denied the claim of the plaintiff and pleaded that there was an oral agreement between the father of the plaintiff and the defendant whereby the father of the plaintiff had permitted the defendant to make construction of the suit block shown by letters ABCD on the open portion of the plot. It was also pleaded that the plaintiff's father had agreed that the defendant would be using the suit block without paying any rent after making the construction.

It was the defendant's case that he had incurred an amount of Rs.30,000/- for construction of the suit block.

The defendant filed a counter claim praying that the defendant be directed to pay Rs.30,000/- as costs of construction to the defendant. Certain other reliefs were also sought by the counter claim. The trial Court, after considering the evidence tendered by the parties, held that the defendant was the tenant in the suit premises and the plaintiff had by a notice dated 02.04.1996 terminated the lease of the defendant. The Court held that the plaintiff was entitled to possession of the suit premises and the defendant was liable to pay an amount of Rs.17,500/- to the plaintiff towards the arrears of rent. The counter claim of the defendant was dismissed.

In an appeal filed by the defendant against the judgment passed by the trial Court, the appellate Court confirmed the findings recorded by the trial Court to dismiss the appeal filed by the defendant. The orders passed by the trial and the appellate Court are challenged in the present second appeal.

The findings recorded by both the Courts are based on the proper appreciation of material evidence on record. The Courts considered the fact that the defendant had not entered the witness box though he had pleaded about the oral agreement between the plaintiff's father

and himself. The best evidence on the oral agreement could have been tendered by the defendant himself. The Courts then held that the evidence adduced by the defendant was highly inconsistent with his pleadings and had contradicted the case of the defendant himself. The Courts held that the evidence tendered by the plaintiff was more probable, reasonable and believable and hence, after weighing the evidence tendered by both the parties, the suit filed by the plaintiff was decreed.

Since the findings recorded by both the Courts do not give rise to any substantial question of law, the second appeal is dismissed with no order as to costs.

JUDGE

APTE